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May 13, 2018

**To: Flathead County Planning Board**

Re: FPP-19-12 A request by C.R.O.W. LLC for preliminary plat approval of North Lamb Lane Subdivision, a proposal to create six (6) residential lots on approximately 15.2 acres. The subdivision will be served by shared septic and wells. Access would be off Lamb Lane via Karrow Avenue. The property is located at 1545 Karrow Avenue, Whitefish, MT.

**Dear Planning Board Members:**

On behalf on my client, the South Whitefish Neighborhood Association, I have review the application and the staff report. Based on that review I have prepared an "alternative" set of findings to those the planning office staff report provided you and the rationale that supports these alternative findings. These alternative findings we believe provide you the evidence or findings to soundly recommend denial of the subdivision application before you tonight. Note that teal highlights indicate proposed alternate findings and yellow the current finding. **NOTES** provide additional information to support the proposed new finding. Also attached are three exhibits—A, B, C with supporting information.

#### SUMMARY OF RECOMMENDED CHANGES TO FINDINGS

**Finding #1** – There would be minimal impact on agriculture and agricultural water user facilities as a result of the proposed subdivision as conditioned because the subject property is not currently used for agriculture, is located adjacent to the City of Whitefish and zoned R-2.5, and the property has no irrigation infrastructure on site, is not in an irrigation district, and is not party to any irrigation agreements.

**Finding #1** – The character of this area remains primarily large lot development. There is a significant conservation easement of 60 acres to the south of this subdivision on the Watkin's property which is in place to protect agricultural, water, and wildlife resources in this corridor. A significant number of acres in this area are in current agricultural uses and current farming practices include growing hay, raising livestock and pastureland. While the subject property is zoned R2.5 it is 15 acres in size and suited for agricultural uses. The continued conversion of this area into small subdivision which decline opportunities to annex into the city of Whitefish for sewer and water services is not consistent with the growth policy of

Whitefish nor Flathead County and hampers long-term cost effective provision of services by both the county and the city.

**NOTE:** In public testimony regarding a proposed development also adjoining this intermittent stream channel/wetland complex, Cheryl Watkins testified that the Blanchard Lake zoning from 7th Street to Highway 93 is large acreage and rural. She noted her property of 60 acres is in conservation easement to conserve agricultural uses, water quality and wildlife uses in this corridor. She noted that the Lukes to the west of her property have 60 acres as well as the Robinsons and Lambs to the north. She concluded that the Lukes and her both have livestock and they farm.

**Finding #2** – ~~The subdivision will have minimal impact on water and wastewater services because the subdivision will utilize a multi-user well and septic system with adequate easements for water and sewer mains, the proposed wastewater treatment system appears to meet DEQ non-degradation standards, and the water and wastewater treatment proposal will be reviewed and approved by the Flathead City-County Environmental Health Department and DEQ prior to final plat approval.~~

**Finding #2** – The Flathead County Subdivision Regulations require the following:  
**Environmental Assessment Contents** There are two major sections to the Environmental Assessment. The first section incorporates the natural system provisions of 76-3-603 and 76-3-608, MCA. The second section evaluates the impacts to the human community and incorporates 76-3-608 (3)(a) criteria for public health, safety and local services. **The sources of information for each section of the Assessment shall be identified. All Environmental Assessments shall contain the signature, date of signature and mailing address of the owner of the property and the person, or persons, preparing the report and citation and a copy of all supporting information.** While the EA at various points cites the source of information particularly regarding sewer and water being from Matt Nerdig, A to Z Engineering, (and in many other references merely as “owner”) virtually no supporting information is provided that is attributed to the work or conclusions of Matt Nerdig with A to Z Engineering. There is no indication that they have even reviewed and approved of the information included in this EA which is dated July 2019. Furthermore there are no other professionals with the expertise to base findings of fact on as required by FCSRs making it impossible for the public to provide meaningful public comment. Thus it is impossible at this time to conclude that the subdivision will have minimal impact on water and wastewater services. Based on the limited information provided in this EA in violation of the FCDRs, this subdivision application should be denied.

**Finding # 3** – Impacts on solid waste disposal would be acceptable with standard conditions because the lots within the proposed subdivision would utilize contract haul services for solid waste management.

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**Finding #4** – Impacts on area roads would appear to be acceptable with the imposition of conditions because all lots would be accessed by Lamb Lane, a paved local road and a Private Easement and Road Maintenance Agreement would ensure road maintenance is accommodated on the shared road.

**Finding #4** – Impacts on area roads can not be adequately considered. While the proposed subdivision of six single family residents does not meet the FCSR threshold of subdivisions which will contribute 400 or more average vehicle trips (ADT) per day to the County road system and is apparently not required to complete a Traffic Impact Study (TIS), the EA fails to consider or address the limited current and future capacity of Karrow Avenue including lack of county funding for future improvements, the current lack of basic safety features like no shoulders, lack of striping, if there is adequate easement for future expansion, and consideration of recent development in the corridor that may further diminish the capacity of Karrow Avenue with out mitigation. Finally, the EA fails to draw on or discuss any transportation plans that have identified issues that might be considered during this subdivision review.

**Finding #5** – Impacts on local services with regard to schools, recreation, and mail delivery would appear to be acceptable as the proposed subdivision would add approximately 3 students to the local school district, the applicant is proposing centralized mailboxes, parkland dedication is being accommodated by the 5.87 acre open space which will be maintained by the Homeowners Association, and a bike and pedestrian easement is shown on the preliminary plat along Karrow Avenue.

**Finding #6** – Impacts from storm water run-off will be acceptable because the applicants have proposed bioretention facilities along Lamb Lane, all new driveways, and residential structures and the stormwater management plan will require review and approval by the DEQ prior to final plat approval.

**Finding #6** – Impacts from storm water run-off can not be evaluated as the EA is deficient in essential information on ground water and soils that is needed to reasonably evaluate and provide comments on the proposed bioretention facilities along Lamb Lane, the stability of proposed new driveways and residential structures and the stormwater management plan in areas of shallow ground water and soils that may not drain well. Proposed tree removals will likely increase stormwater run off but this has not been evaluated.

**Finding #7** – Impacts on fire and medical services would be minimal with standard conditions because the lots within the proposed subdivision would be served within an acceptable response time by the Whitefish Fire Department in the event of an emergency, would be required to meet the requirements of the fire district and the area located within the WUI will be managed and thinned as noted in the Fire Prevention, Control, and Fuels Reduction Plan and the HOA CC&Rs.

**Finding #7** – Impacts on the water supply by fire are not adequately addressed in the EA.

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**NOTE:** The FCSR require an explanation of if there is adequate water supply for fire protection but the EA fails to address this. While there is reference to three fire hydrants on Lamb Lane, no information is provided in the EA as to what water source services these. If it is Whitefish city water, the city has water pressure issues in the southern portion of its service district and this should be reviewed. The EA fails to provide any information about these hydrants and the proposed conditions for this subdivision fail to require that these be maintained.

Finding #8 – Impacts on police services would be minimal with standard conditions because the lots within the proposed subdivision would be served within an acceptable response time by the Flathead County Sheriff's Department in the event of an emergency.

**Finding #9** - Adverse impacts to air quality and noise are not anticipated with standard conditions as all roads accessing the subdivision are already paved, a Dust Control Plan was provided to mitigate potential issues of dust during construction and impacts of noise are not expected to extend beyond property lines.

**Note:** This is condition in letter from Flathead County Environmental Health Department in the staff report for adjoining development Karrow properties LLC has not been considered in this EA or the current staff report.

*Sanitation in Subdivisions Act (Title 76.4.1). This property lies within the Whitefish Air Pollution Control District and is subject to all regulation listed in Flathead County Air Pollution Control Regulations including pavement of roads and parking lots, clearing of land greater than ¼ acre in size, construction and demolition activity, and material to be used on roads and parking lot standards." Letter dated January 7, 2016*

Finding #10 – The proposal does not appear to have an impact on high voltage electric lines, high pressure gas lines or an airport influence area because the property is not located near any of these hazards.

**Finding #11** – No impacts from soils and geological and avalanche hazards are anticipated because the property is relatively flat and there is no evidence of unstable soils, rock outcroppings, falls or slides indicating significant geologic hazards on the property.

**Finding #11** – The applicant's EA simply relies on broad general identification of soil types found on the site by merely referencing the US Department of Agriculture and Soil Conservation Services but providing no maps or documentation. Studies done by Aquatic Resources Consulting Inc. 2018 and submitted for this hearing record cast reasonable doubt on the applicant's EA statements. Test pits dug near the property and in similar vegetation found the presence of hydric soils. Certain types of soils are better at treating sewage than others. A soil assessment determines not only the type of soil, but also certain properties that are directly



related to its ability to treat sewage. Additionally the City of Whitefish did ground water sampling on this site when considering it for a city cemetery, that found ground water on the site was typically 3-5 feet below the surface of the ground and sometimes it was within 1 ½ feet of the ground surface. Without more extensive on site data and sampling it can not be concluded that there will be no impacts from soils and that there is no evidence of unstable soils for building or for the proposed septic, well and water and sewer line applications proposed. The EA does state, "As per groundwater monitoring completed for septic system design there is some ground water present in the spring on the farther east test hole." However, no test hole data or soil data was provided by the applicant.

**NOTE:** Studies done by Aquatic Resources Consulting Inc. 2018 ( See Exhibit A) found as you move northward through the Gordon/Watkins property and onto the subject parcel (Whitefish 57) (south of the CROW LLC) , the terraces recede and there is a change in vegetation. Riparian shrubs diminish and we transition to a more open wetland complex comprised of wetland grasses including several species of sedges and rushes. This vegetative community persists throughout the southern portion of the Whitefish Assembly of God church's property. North of the church's access road, we again see the emergence of riparian shrubs. Soil test pits were dug in locations to the south and north of the subject parcel which all exhibited the presence of hydric soils. The proposed developers of the Whitefish 57 subject property have previously acknowledged the presence of a jurisdictional wetland and our field data is concurrent with this assessment. Although we did not perform a rigorous wetland delineation, it can be definitively said that there is a jurisdictional wetland area upstream (to the south) of the subject parcel passing through the Gordon/Watkins property and the Great Northern Heights subdivision and this area meets the criteria of a jurisdictional wetland by exhibiting the known and documented presence of water, the known and documented presence of wetland vegetation, and the presence of hydric soils. **It can be definitively said that there is a jurisdictional wetland area downstream (to the north) of the subject parcel passing through the Whitefish Assembly of God church property and this area also meets the criteria of a jurisdictional wetland by exhibiting the known and documented presence of water, the known and documented presence of wetland vegetation, and the presence of hydric soils.** Additionally the City of Whitefish did ground water sampling on this site when considering it for a city cemetery, that found ground water on the site was typically 3-5 feet below the surface of the ground and sometimes it was within 1 ½ feet of the ground surface. See attached as Exhibit B.

~~Finding #12 – No impacts to the flora and riparian/ wetland area are anticipated on the subject property as there are no riparian area on the property and the nearest body of water and wetland is located approximately 1,000 feet to the west and a weed management plan will be required as a condition of final plat approval.~~

**New Finding #12 – The application failed to demonstrate that there would be no impacts to the flora and riparian/ wetland area.** Studies done by Aquatic

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Resources Consulting Inc. 2018 (see Exhibit A) document the presence of a “an intermittent stream channel/wetland complex” stretching from the Great Northern subdivision to the south and stretching north to and through Whitefish Assembly of God church property where measurements were made and showed a belt width ranging from 130 feet to 180 feet. Historic and current aerial photos of this area show this drainage stretching all the way to 7<sup>th</sup> Street. No wetland delineation of this proposed subdivision area have been provided as part of this application. A wetland delineation is needed to demonstrate that there would be no impacts to potential existing the flora and riparian/ wetland areas within the subdivision based on similar features found to the south and extending beyond the subject property. Additionally it is not possible to assess whether this subdivision proposal is in compliance with the setbacks and protections required when we do not know where and wetland boundaries are. Regrettably the applicant, Jake Christionsen, who has not provided for the record any of his professional qualifications, and it appears he is not a licensed hydrologist. Christionsen completed the information provided in the EA. Little documentation and in most cases, none, is provided for the conclusions reached in this EA and it should not be relied on for definitive conclusions of findings of fact with out more authoritative documentation. <sup>1</sup>

**NOTE:** According to Studies done by Aquatic Resources Consulting Inc. 2018 (see Exhibit A) Water leaves the intermittent stream/wetland complex at the northern portion of the drainage corridor and enters the property owned by the Whitefish Assembly of God church (which is shown as a red star and labeled Whitefish Assembly of God-southern on the Field Locations map). It travels in a northward, northwestward, and then northward direction and flows through a culvert under the church’s access road (shown as a red star and labeled Whitefish Assembly of God northern on the previous Field Locations map).

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<sup>1</sup> FCSR Resource Assessment and Impact Criteria Report iv. If wetlands are present, the subdivider shall identify and provide a map showing wetland areas. A wetlands investigation completed by a qualified consultant, using the most current U.S. Army Corps of Engineers’ Wetlands Delineation Manual may be required. If any construction or changes are proposed which require a 404 Permit, the subdivider shall acknowledge that the permit is required and will be obtained.





**Whitefish Assembly of God-southern Boundary.** This photograph was taken on 5/18/2018 at the property boundary with a view to the south towards the subject property. Clearly evident is an active conveyance channel which can be seen from the foreground back up to the center portion of the photograph (near the central portion of the subject property). Wetland sedges and rushes (darker colored vegetation) can be seen encroaching into the channel in the foreground. Looking to the south, the lateral extent of complete inundation of the area is marked by the wetland vegetation on both sides of the open water channel (denoted by the darker vegetation) and can be construed as the absolute minimum extent of the wetland.



**Central portion of Whitefish Assembly of God property.** This photograph was taken on 5/18/2018 between the two field sites with a view northwestward. The channel is less defined but the wetland is still obvious and its lateral extent is significant ranging from 130 feet to over 180 feet in width.

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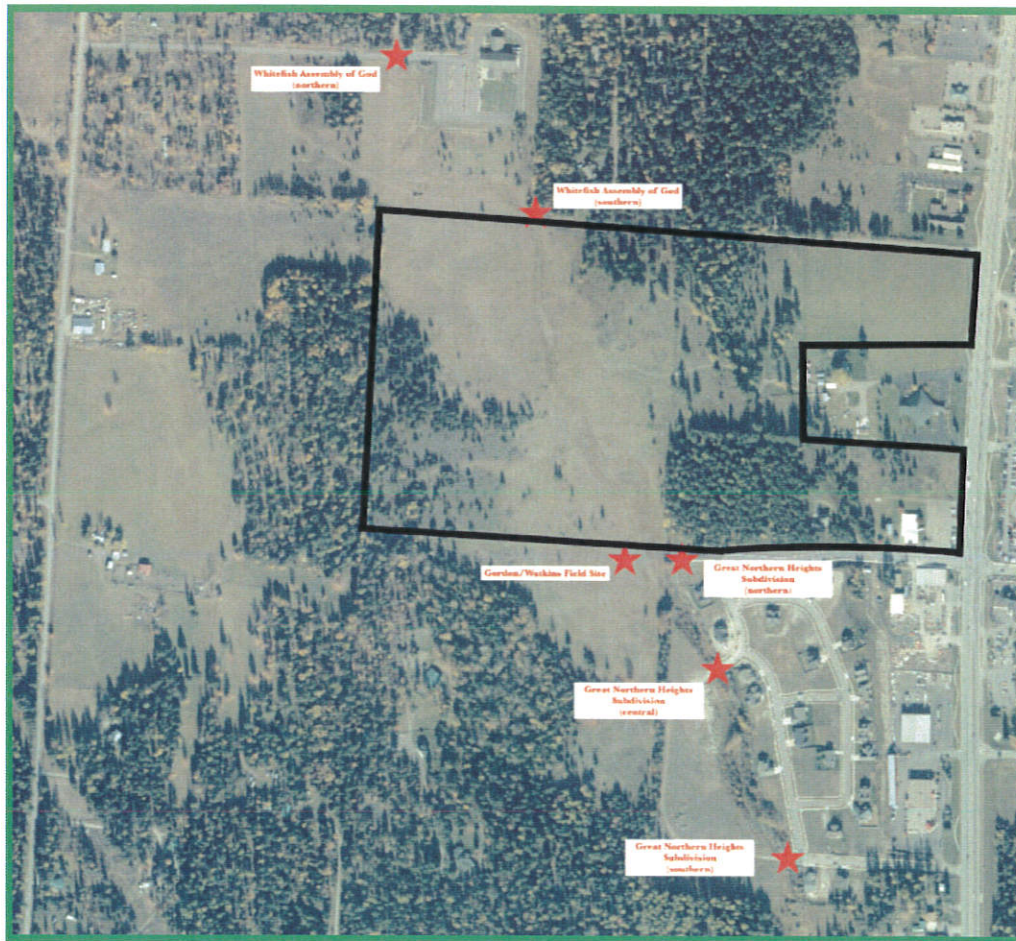


**Whitefish Assembly of God-northern.** This photograph was taken on 6/5/18 adjacent to the church's access road with a view to the south/southeast looking back at the channel/complex. The channel and adjoining wetland complex is clearly defined by the change in vegetation (darker color). The channel is more defined in the lower portion of this photograph probably as a result of active manipulation to promote conveyance through a single culvert under the roadway.



Photo taken 5//10/2020 from Lund Road north of the proposed Lamb Lane Subdivision looking south. The area were the horses are grazing is a continuation of the intermittent stream channel/wetland complex.





**Primary Field Site Locations.** The above '13 aerial photograph shows the six primary field site locations where data was collected (shown by a red star). The subject property's approximate boundaries are shown with a solid black line.

**Finding #13** –The proposal would not introduce adverse impacts to public health and safety in regard to flood risk because the subject property does not contain any land located within a Special Flood Hazard Area.

**New Finding #13**—It is not clear from the hearing record if the proposal, as the applicant asserts, would have adverse impacts to public health and safety in regard to flood risk because professional on-site studies have not been conducted of this southern reach of the intermittent stream channel/wetland complex that drains through this area. Photo's submitted for the hearing record show historical surface water at what may be considered flood levels and no evidence, professional or factual documentation has been provide to show that such impacts do not extend on to the property being proposed for subdivision with this application.

See photo on next page taken from the EA done on property just to the south on this project:



The area of this stormwater conveyance is to be left in its current land use designation and zoning designation. This is noted on the Land Use Map.



Photo taken March 24, 2017 looking eastward over the property towards Don K and Wrights Furniture.

**Finding #14** – Impacts from the proposed subdivision on wildlife appear to be acceptable with conditions because even though the property contains critical habitat for species of concern, the proposed clustered subdivision is located adjacent to an urban setting, will have 5.87 acres of open space, the proposed CC&Rs include language on safe living with wildlife.

**New Finding #14** – Impacts from the proposed subdivision on wildlife have not been adequately documented. While the proposed cluster subdivision will provide 5.87 acres of open space and the proposed CC&Rs include language on safe living with wildlife Flathead County does not enforce CC&R. Inadequate information has been provided in the EA by the applicant for the planning staff to be able to develop and recommend conditions to mitigate impacts to wildlife.

**NOTE:** Biological diversity and wildlife populations are an extremely valuable resource and asset for this area, its residents and our visitors. It is extremely important that the existing wildlife that utilize this intermittent stream channel/wetland complex area be given due consideration and it must be considered whether the proposed project will adversely affect the wildlife populations (both resident and transitional). In our opinion, the applicant's rudimentary analysis (at best) followed by a cursory general statement regarding this important asset seems wholly insufficient. This is a complex issue that is affected by the type of development, density, encroachment, species involved, life stage of the species, etc. etc. Local knowledge suggests that this area does in fact support a diverse biological community and the effects of this proposal on the biological community needs to be fully addressed. Questions that need to be answered include:



- What species are present or utilize the area, the wetland, or the adjoining areas?
- Do any of these species use these areas as brood areas for raising their offspring?
- How susceptible are these species to disturbance and encroachment?
- Will they continue to be supported and exist to the same degree, both in quantity and diversity, if this project is approved?

Finding #15 – The proposed subdivision will not adversely impact historical features because there are no known known historic, archeological, or cultural sites on the subject property.

Finding #16 – The preliminary plat would conform to all provisions of the Montana Subdivision and Platting Act if it contains all elements required to meet state survey requirements, which would be determined when it is reviewed by the Flathead County Examining Land Surveyor prior to final plat approval.

Finding #17 – The proposal has been reviewed as a major subdivision in accordance with statutory criteria and standards outlined in Section 4.4 of the Flathead County Subdivision Regulations effective December 3, 2018.

**Finding #18** – The preliminary plat identifies adequate easements for utilities to serve the subdivision, including the multi-user well and septic system mains. All other easements associated with this subdivision and the subdivided property shall be clearly located on the Final Plat to satisfy applicable requirements of the Montana Subdivision and Platting Act and the Flathead County Subdivision Regulations.

**NOTE:** issues raised under findings #11, #12 and #13.

Finding #19 – Karrow Avenue would provide legal and physical access to the subdivision and, as conditioned, Lamb Lane would provide legal and physical access to the subdivision lots.

**Finding #20** – The proposal generally complies with the Flathead County Growth Policy and the zoning regulations because the proposal conforms to the regulations used in the review of subdivision in Flathead County, and the applicant intends to establish a clustered housing development as allowed by the Conditional Use Permit (FCU-19-03) granted May 7, 2019.

**Finding # 20** -The proposal fails to comply with the Flathead County Growth Policy and the zoning regulations requiring a minimum of 2.5 acres. See Exhibit C attached. Letter to the Flathead Board of Adjustment from Attorney Michelle Tafoya ,TAFOYA LAW FIRM, PLLC, May 3, 2019

#### **Additional Conditions Needed**

1. **Basements: Given the depth to ground water of the site no basements shall be allowed.** (See page 3 BOA Staff Report: "Floor area shall include basement space where the ceiling is at least 30 inches above the ground

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elevation of adjacent portions of the lot, elevator shafts and stairwells at each floor, mechanical equipment rooms, or attic spaces with headroom of seven feet six inches or more, penthouse floors, interior balconies and mezzanines, enclosed porches.”

2. **Fire Protection:** Require the installation of the three fire hydrants claimed to exist on page 7/8 of the supplemental information BOA page 7/8. Given water capacity issues with City of Whitefish, the applicant must demonstrate fire pressure capacity.
3. **Covenants:** Since the staff report notes that the county will not enforce covenants these documents need to be provided now so that the public can review and provide comments on elements that need to be identified as conditions can be reviewed and added to the list of conditions specific to this development like wildlife proof garbage containers.
4. **Landscaping of septic mound:** require as stated in BOA supplemental landscaping of septic mound. See page 2B5 Landscaping page 5/8 Also see statement on page of the BOA staff report that states “Cluster development in a residential district does not have landscaping requirements.” So require as a condition the landscaping identified in the application on page 9 which includes: According to the application, “The landscaping within the subdivision will have:
  1. Reclaimed native grasses planted and native soils redistributed over utility excavations
  2. The septic mound will be landscaped to represent a hill surface by utilizing native grasses, accent rocks and grading.
  3. Keeping home construction to the building envelope areas will protect the native forest and vegetation
  4. Landscape lawn areas will be limited on each lot to 1200 square feet. All bed areas will promote xeriscape landscape for purpose of water conservation.
  5. The trails surfaces will be kept to a natural look with ½ or smaller chip gravel surface.
  6. The native forest on the lots and the Open Park Space will be maintained and cleaned up for demonstrating a healthy and fire wise forest.”

**Exhibit A** --See report attached: Clint Brown, Hydrologist, Aquatic Resources Consulting Inc. P.O. Box 279 Lakeside, MT 59922

**Exhibit B**—See report attached: City of Whitefish Evaluation of proposed subdivision site as a potential cemetery site.

**Exhibit C**---Letter to the Flathead Board of Adjustment from Attorney Michelle Tafoya ,TAFOYA LAW FIRM, PLLC, May 3, 2019

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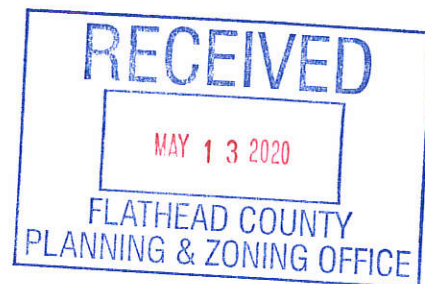
## **BACKGROUND & CONTEXT**

In early 2018 Aquatic Resources Consulting Inc. was specifically asked to review natural resource related issues and concerns regarding a proposal from Whitefish 57, LLC for annexation and development of a property located in Section 1, Township 30 North Range 22 W. We submitted a letter to the City of Whitefish Planning Board on February 15, 2018.

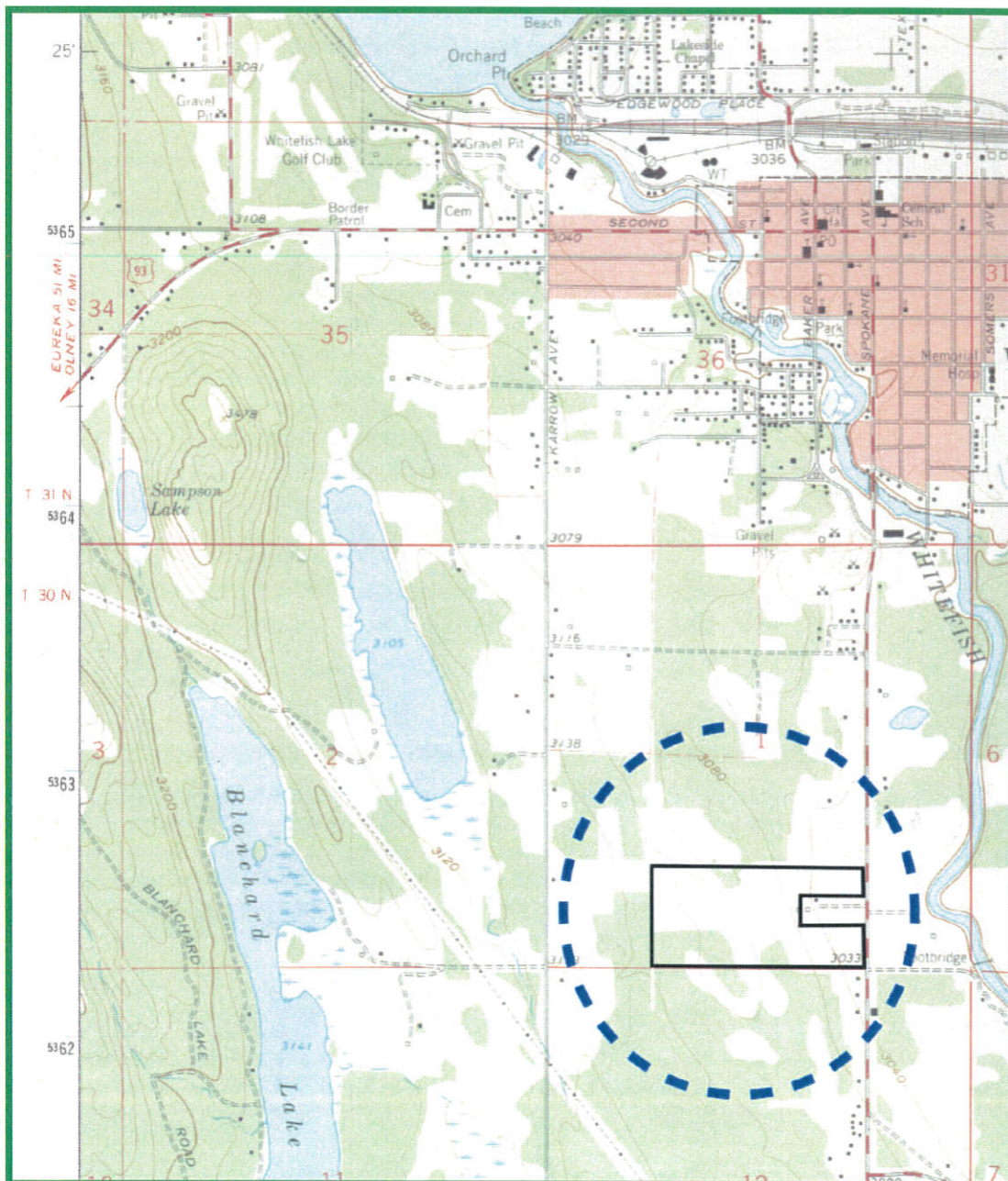
Subsequently, we were asked to study the area (research historic and public information) as well as develop new information as appropriate to accurately assess the subject property and to consider potential impacts and areas of concern as they relate to the Whitefish 57 proposal. To this end, we conducted extensive field work during the spring and summer of 2018 (multiple site inspections spanning several months) to document the existing hydrologic conditions in and around the subject property.

Several different revised proposals have been submitted to the City of Whitefish and the current proposal was forwarded to the City Council by the Planning Board without a recommendation (the Planning Board was unable to reach consensus on whether to recommend adoption or denial). We submitted a letter to the City of Whitefish City Council regarding our assessment and concerns of the current Whitefish 57/Eagle Enterprises proposal which was dated August 3, 2018. It is assumed we will continue to evaluate any new proposals for the development of the subject property.

This report constitutes the information that we have developed to date and could be supplemented as more information comes to light or additional knowledge is acquired. It should be specifically pointed out that this report does not constitute a definitive wetland delineation for or on the subject property (because we had no legal access to the subject property which would be necessary for a formal wetland delineation). Instead, this report depends on utilizing all available public information as well as specific field data collection on the properties completely surrounding the subject property.



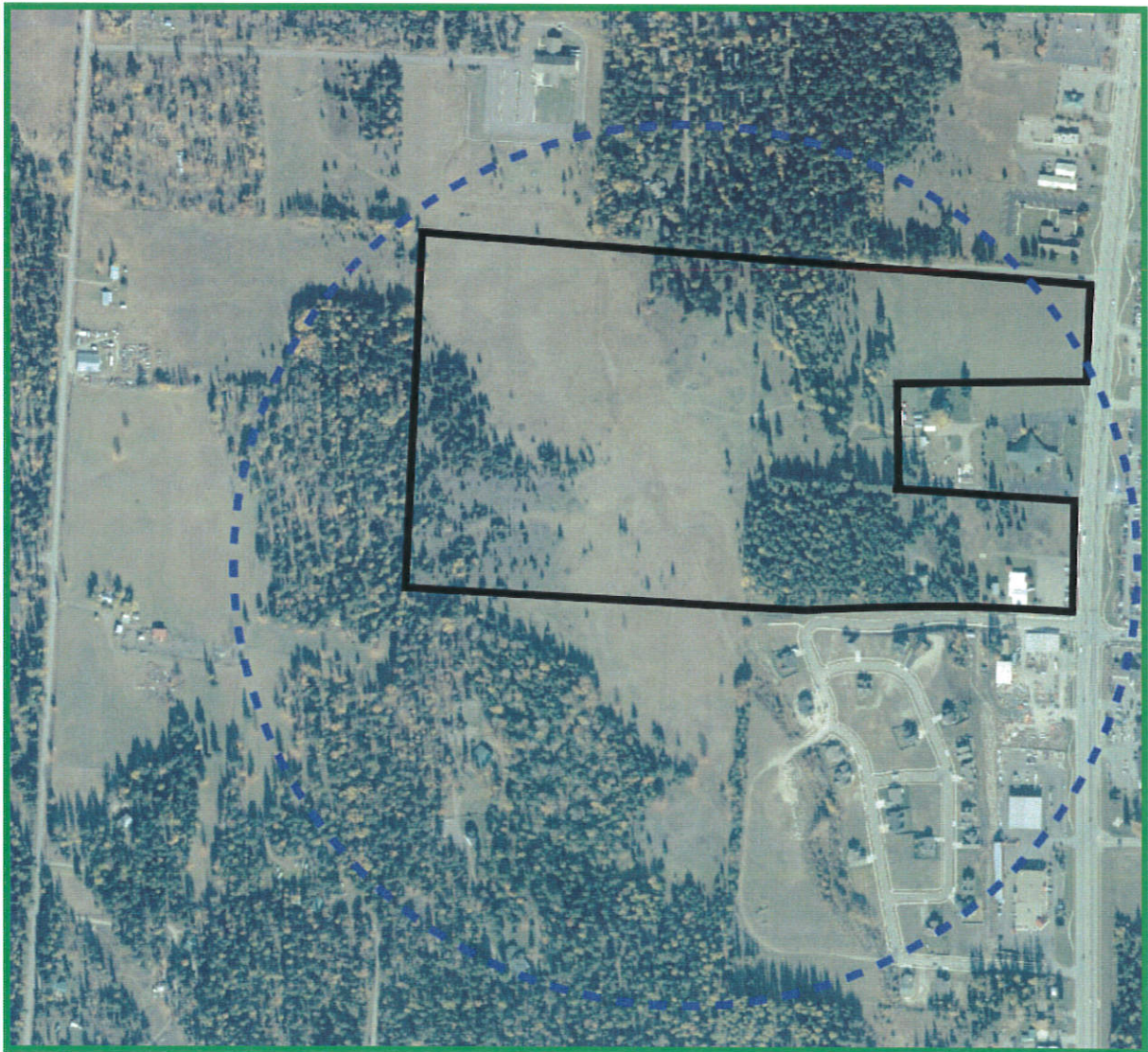
The general subject area is located in the S 1/2 of Section 1, Township 30 North Range 22 West in Flathead County, Montana. Below is a map showing the general location of the study area using the U.S.G.S. 7.5' Topographic Quadrangle Map (Whitefish Quadrangle) as a base. The topographic base map was published in 1962 with the original topography developed from photogrammetric methods from aerial photographs taken in 1956 and field checked in 1962 prior to publication. The general location of the study area is shown by the dashed blue circle and the approximate area of the Whitefish 57 proposal is shown by a solid black line.



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We have also shown the general study area on an aerial photographic base map below. The base is a 2013 aerial photograph. Similar to the previous topographic map on the preceding page, we have shown the approximate boundaries of the Whitefish 57 proposal in solid black lines and the general study area in a blue dashed circle. For reference, the Great Northern Heights subdivision is seen in the lower right of the air photo, the Whitefish Assembly of God church is in the center of the photo at the upper boundary, and Highway 93 runs along the right side of the photograph.



## HISTORICAL AERIAL PHOTOGRAPHS

During the 20th and 21st century, aerial photographs were taken and can often be an excellent resource for information to document land use and natural resource attributes. For our study area, we were able to locate at various local governmental agency offices photographs going back to the 1930's at various governmental offices. Scanned copies of these photographs are found herein. There are also photographs from the 1990's to present that can be found on the Flathead County GIS database/website and these were also reviewed.

The following table lists the photographs that we were able to obtain, review, and analyze:

Year	Photo Number	Date Taken
1938	MI-1-7	5/21/1938
1946	GS-CJ #5-84	8/18/1946
1955	MI-27K-10	7/26/1955
1961	MI-2BB-208	7/26/1961
1974	A40-30029 #174-143	6/14/1974
1990	NAPP #2640-213	7/1/1990
2004	2004 Aerial Photograph	Unavailable
2005	2005 Aerial Photograph	Unavailable
2009	Aerial Photograph (LIDAR)	Unavailable
2009	Aerial Photograph (NAIP)	Unavailable
2011	Aerial Photograph (NAIP)	Unavailable
2013	Aerial Photograph	Unavailable

Each photograph has its own scale and care must be taken when comparing different photos. Where appropriate, we have tried to show the approximate location of the Whitefish 57 subject area. For brevity, we have only presented the aerial photographs that are most illuminating herein. We have included the 1955 and the 1974 aerial photograph as well as the 2013 photograph (used as the aerial photographic base map throughout this report). Although we only included the 1955 and 1974 historic aerial photographs in the report, we found no significant inconsistencies in the other aerial photographs and absolutely nothing is contained in these other photographs (not included) that is inconsistent with the statements and findings contained within this report.





*1955 Aerial  
Photograph.*

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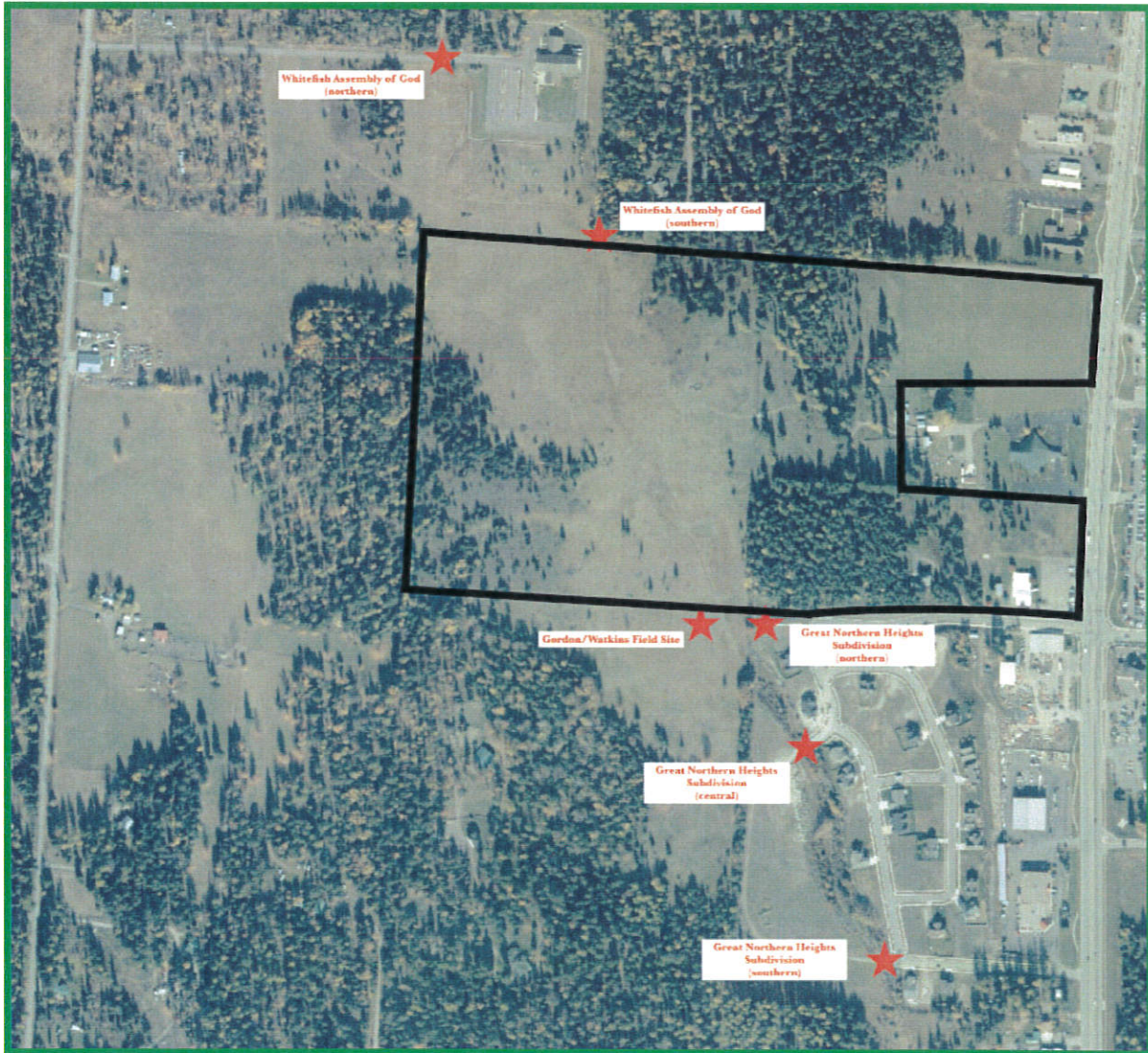


*1974 Aerial  
Photograph.*



## SITE INSPECTIONS, FIELD WORK, AND DATA

As part of our analysis, we conducted field work and multiple site inspections during the months May through July of 2018. The timing of this field work and site inspections was intentional to try and document the situation throughout the high groundwater season. We were very specific in our attempts to document hydrologic inputs to the subject area's intermittent stream/wetland complex as well as attempting to document the outflow from the system. Again, we did not have access to the site, so we focused our data collection efforts on the adjoining properties.



**Primary Field Site Locations.** The above '13 aerial photograph shows the six primary field site locations where data was collected (shown by a red star). The subject property's approximate boundaries are shown with a solid black line.

The six primary field location sites are located to the north (2 sites) and south (4 sites) of the subject property. Of the four sites south of the subject property, three sites were located within

the Great Northern Heights Subdivision (southern, central, and northern) and one site was located on the Gordon/Watkins property. The remaining two field sites (both north of the subject property) were located on the Whitefish Assembly of God church property (southern and northern). The six primary field locations were each visited on multiple occasions and substantial data was collected. Other locations were utilized for general information (ex.- Luke property), but have not be specifically set forth. Additionally, during this season, we also performed an aerial reconnaissance via private flight over the site and surrounding areas to further document the situation and more clearly see the system as a whole. Besides the specific aerial photographs previously discussed, all flight photos were taken by Aquatic Resources Consulting Inc. and can be found throughout this section and are specifically referred to as flight photographs.

We have referred to this as an intermittent stream channel/wetland complex because that is the most accurate description of the area. There is a stream that flows through the area with a defined to semi-defined channel. By definition an intermittent stream does not flow year-round. In this case, the stream conveys flowing surface water within its channel boundaries for several months of the year (during the spring runoff and summer runoff months associated with snow-melt) and during the wetter fall months in direct response to rain/snow events.

The larger area (encompassing the stream channel and the surrounding area) is also saturated with groundwater during extended periods from early Spring well into the summer/late summer months. Intuitively, we understand that there is a direct connection and inter-relationship between the shallow groundwater and the surface water contained within the actual stream channel.

We have tried to characterize the geomorphology, hydrologic inputs and outflows, actual flow measurements, vegetation, and soils information into this document such that an accurate representation of the overall area is presented.



## **Geomorphology**

The geomorphology of this area is in a state of transition within the study area. At the upper portion of the study area, throughout most of the Great Northern Heights Subdivision, the channel and associated floodplain and riparian corridor is contained in a central section between two Holocene terraces. The floodplain and riparian corridor is, elevationally, a few feet below the surrounding terraces and landforms. Being constrained by the terraces, the width of this floodplain and riparian corridor is fairly uniform and ranges from 90 feet in width to over 160 feet with an average belt width of approximately 130 feet (field verified). The narrowest areas are located immediately upstream of the culverted road crossings within Great Northern Heights subdivision and should be considered potentially altered (non-natural) widths.

As we move northward, the channel and floodplain becomes less entrenched as the terraces disappear and the system “opens” having access to the entire valley floor. This is occurring at the far northern corner of the Great Northern Heights subdivision and onto the Gordon/Watkins property. Not surprisingly, the belt width of the riparian corridor (as delineated by topography and wetland vegetation) ranges from 126 feet to 140 feet in this transition area (field verified).

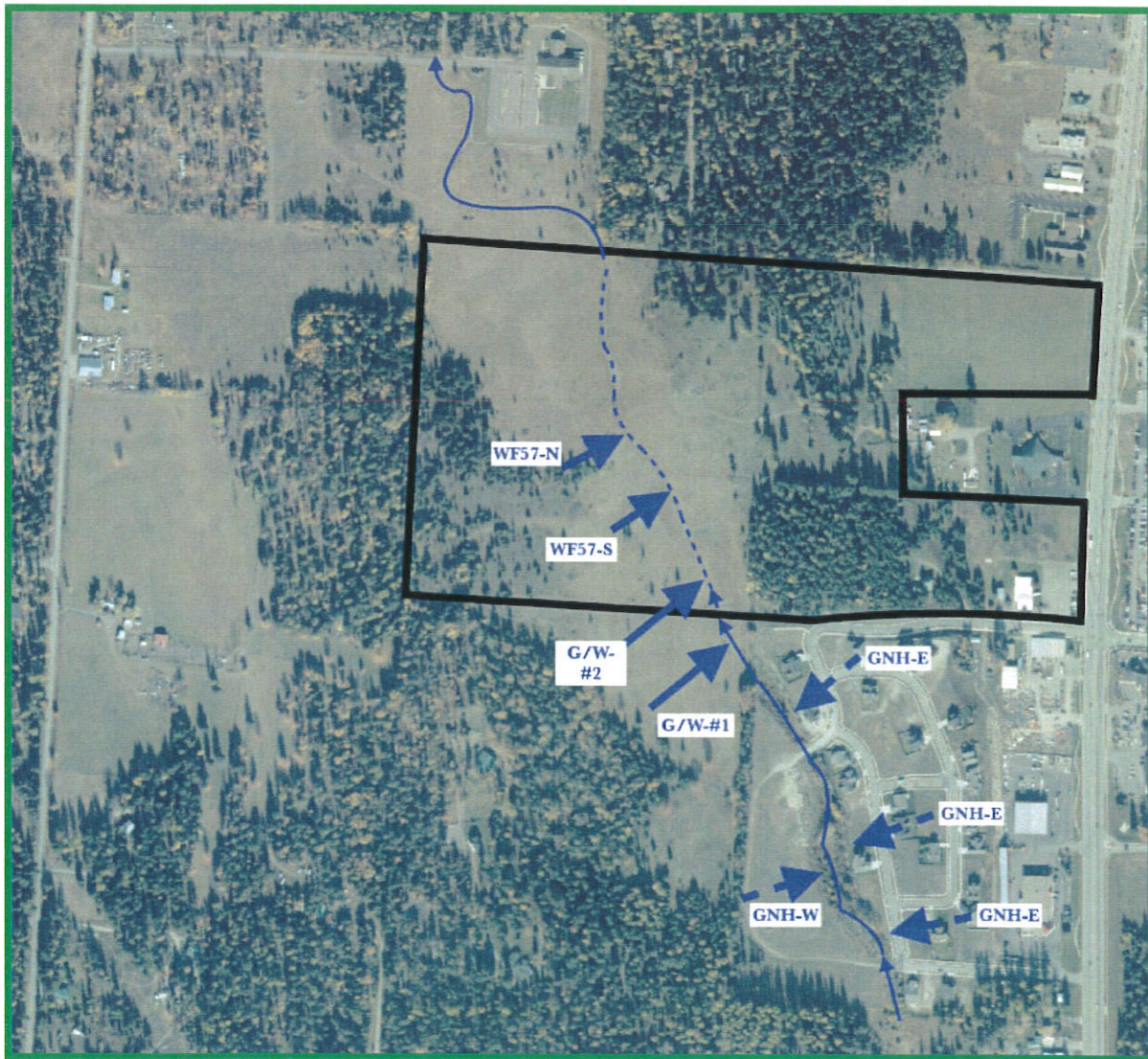
By the time the channel has reached the subject property it is no longer confined by any terraces and the belt width increases dramatically. Beltwidth measurements of clear wetland vegetation indicators show widths ranging from 190 feet to 270 feet in width. Also, precise measurements of the active channel can be taken from the historic aerial photographs yielding widths of 190 feet for the channel's beltwidth (not including adjacent wetland areas beyond the active channel's migration pattern).

Similar measurements on the Whitefish Assembly of God church property were made and showed a belt width ranging from 130 feet to 180 feet.

Lastly, there is an anomalous issue that is apparent from a review of the historic aerial photographs. The active channel is overly straight and does not exhibit the standard plan view characteristics one would expect in this geomorphic setting. We suspect that sometime prior to the first aerial photograph (very early 1900's) the channel was straightened probably for agricultural reasons including an attempt at draining water from the area and increasing the agriculturally productive and useable ground. This is past channel straightening and the anomalous plan view characteristics is important to note because it would minimize the aerial extent and width of the channel, riparian corridor, and wetland complex. Stated differently, if the channel had been left unaltered or was returned to its natural plan form, the extent of the belt width of the channel and the associated wetland would actually be larger than what is currently seen.

## **Hydrologic Inputs**

The most obvious source of water for the intermittent stream/wetland complex on the subject property is an intermittent stream channel that flows through the Great Northern Heights subdivision. However, there are multiple sources of water contributors to this intermittent stream/wetland complex. Using the same '13 aerial photograph as a base map, we have shown known hydrologic inputs to the system below.



**Hydrologic Inputs.** We have used the '13 aerial photograph as a base map to show the known hydrologic inputs to the system. The intermittent stream channel is shown as a blue line (solid line outside the subject property and dashed within the subject property). We have also shown by blue arrows known areas of water being delivered to the system (sources). These additional water sources generally fall into three categories: water from the Great Northern Heights subdivision (labeled GNH-E & GNH-W), water from the Gordon/Watkins property (labeled G/W #1 and G/W #2), and water conveyed to the system on the subject property (labeled WF57-S and WF57-N).

We will discuss these water sources in greater detail individually.



### Intermittent Stream Channel

The intermittent stream channel (shown as a blue line on the Hydrologic Inputs map) flows through the Great Northern Heights subdivision and the northeastern corner of the Gordon/Watkins property, then enters the subject parcel (southern boundary) and runs in a general northerly/north-westerly direction to the northern property boundary where it crosses onto and is conveyed across the Whitefish Assembly of God church property. In some locations, the channel is extremely well defined and in others it is less defined. For example, the channel is relatively well defined in the Great Northern Heights subdivision, in portions of the subject property, and in portions of the Whitefish Assembly of God church property. In some areas, the channel is less defined and the stream channel and wetland seem to coalesce and the boundary between the active channel and the wetland becomes more obscure.

### Great Northern Heights Subdivision Inputs

Portions of the subdivision are contributing water to the intermittent stream through natural surface water drainage, stormwater runoff drainage (collected and delivered), as well as conveyance of natural groundwater. On the map on the previous page, we have shown these sources with a dashed arrow and labeled them GNH-E & GNH-W. We have shown these as a dashed line simply because the full nature of these system inputs has not been fully characterized and quantified. Flow measurement data clearly shows that the stream channel conveys more water at the northern (downstream end) than enters at the southern (upstream end) of Great Northern Heights subdivision. As such, we can infer that this is a gaining stream reach with net system input of water from some combination of natural surface drainage, stormwater runoff drainage (human caused), and groundwater discharge to the system.

### Gordon/Watkins Water Inputs

During the late spring and early summer months (April through July), water (both surface and groundwater) drains off the Gordon/Watkins property and is contributed to the system generally from the southwest to northeast direction or flow path. This surface water contribution is largely sheet flow across the landform and is not actively conveyed in a known channel. Instead, it flows across the surface topography and utilizes natural swales and depressions as it flows to the stream/wetland complex. Besides the surface water, shallow subsurface groundwater is also being contributed to the system flowing from the southwest to northeast (same general flow path as the surface water sheet flow). Groundwater input to the system from the Gordon/Watkins parcel is slightly delayed after the surface water flow; initiation of groundwater input probably lags behind surface water input by approximately 2-4 weeks, but continues long after surface water contribution has ceased. But, during the peak season (May and June), the entire area is completely saturated with shallow groundwater as well as flowing surface water all of which is delivered and conveyed to the intermittent stream and wetland complex.

A portion of this input water's flow is contained wholly on the Gordon/Watkins property and is contributed to the system as the stream channel/wetland complex crosses their property (this is labeled as G/W #1). Additionally, some of this water leaves the Gordon/Watkins property and flows across the Whitefish 57 property before entering the stream channel/wetland complex (this is labeled as G/W #2). We have tried to show this water input in the photographs on the following page. Note that these photographs were taken in early May near the onset and are not representative of the maximum flows or contributions (the photos are very conservative).



**Photograph of G/W #1 Input.**

This photograph was taken on 5/2/2018 and shows surface water flowing from across the Gordon/Watkins property and entering the intermittent stream channel/wetland complex. At the time of this photograph, the ground was completely saturated with groundwater which was also flowing toward and into the stream/wetland system.

**Photograph of G/W #1 Input.**

This photograph was also taken on 5/2/2018 and shows surface water flowing from across the Gordon/Watkins property and entering the intermittent stream channel/wetland complex. At the time of this photograph, the ground was completely saturated with groundwater which was also flowing toward and into the system. This photograph also clearly shows the complex as it crosses the Gordon/Watkins property on its way to the subject parcel. Note the abundance of wetland vegetation that is clearly visible.



**Photographs of G/W #2 Input.** The photographs were taken on 5/2/2018. The photograph on the left shows surface water flowing in a northeasterly direction from the Gordon/Watkins property towards the subject property and the complex. The photograph on the right is taken at the property line with a view towards the wetland complex in the general direction of the flow path. Note that the flow on the subject parcel is beginning to coalesce into distinct conveyance channels.



### Whitefish 57 Water Inputs

There are at least two additional inputs to this hydrologic system which occur on the subject parcel which we have labeled on the Hydrologic Inputs map as WF57-S and WF57-N. Aquatic Resources Consulting Inc. did not have legal access to the subject parcel, but we have attempted to show these in the photographs below.



**WF57 Inputs.** The photograph to the left was taken on May 18 from the northwestern corner of the Great Northern Heights subdivision looking across the wetland complex to the area contributing water which we have labeled as WF57-S and WF57-N.



**Flight Photograph of WF57 Inputs.** This photograph was taken from the air on July 26, 2018. We have labeled the two tributaries as WF57-N and WF57-S. The darker vegetation clearly shows the wetland vegetation extended in "fingers" westward from the wetland complex uphill and suggests these are two areas where surface and groundwater are collecting/coalescing and flowing toward and into the wetland complex. We have shown portions of the subject property's boundaries with a dashed line because they are approximately located (for illustration purposes only).



We suspect the WF57 inputs are similar to the Gordon/Watkins input and include both surface and groundwater flow. However, the clear vegetative pattern seen in the flight photographs could indicate that the WF57 flows are even more concentrated and coalesced into recognizable and defined channels and drainages. It should be noted that the upper limits of the drainage area for these flows lies on the eastern portion of the Luke property which is saturated with groundwater during the spring and summer months and has extensive, established surface water channels.

### **Hydrologic Output**

Water leaves the intermittent stream/wetland complex at the northern property boundary and enters the property owned by the Whitefish Assembly of God church (which is shown as a red star and labeled Whitefish Assembly of God-southern on the previous Field Locations map). It travels in a northward, northwestward, and then northward direction and flows through a culvert under the church's access road (shown as a red star and labeled Whitefish Assembly of God-northern on the previous Field Locations map).



**Whitefish Assembly of God-southern Boundary.** This photograph was taken on 5/18/2018 at the property boundary with a view to the south towards the subject property. Clearly evident is an active conveyance channel which can be seen from the foreground back up to the center portion of the photograph (near the central portion of the subject property). Wetland sedges and rushes (darker colored vegetation) can be seen encroaching into the channel in the foreground. Looking to the south, the lateral extent of complete inundation of the area is marked by the wetland vegetation on both sides of the open water channel (denoted by the darker vegetation) and can be construed as the absolute minimum extent of the wetland.





**Central portion of Whitefish Assembly of God property.** This photograph was taken on 5/18/2018 between the two field sites with a view northwestward. The channel is less defined but the wetland is still obvious and its lateral extent is significant ranging from 130 feet to over 180 feet in width.



**Whitefish Assembly of God-northern.** This photograph was taken on 6/5/18 adjacent to the church's access road with a view to the south/southeast looking back at the channel/complex. The channel and adjoining wetland complex is clearly defined by the change in vegetation (darker color). The channel is more defined in the lower portion of this photograph probably as a result of active manipulation to promote conveyance through a single culvert under the roadway.

### **Flow Measurements**

We collected flow data on multiples dates at several locations in order to better understand the hydrology in the area. We measured the flow of water both upgradient (south) and downgradient (north) of the subject property. Specifically, we collected flow data at the following three locations: Great Northern Heights Subdivision (southern), Great Northern Heights Subdivision (central), and Whitefish Assembly of God (all shown as red stars on the previous ***Primary Field Site Locations Map***). Each of these locations are where the flow is restricted and forced into and conveyed by culverts to allow for road construction. These locations were chosen because they are easily accessible, offer accurate measurement sites, and they afford the best characterization of the flow because of the flow concentration (being forced into the culvert). Each site was visited on several occasions to provide a range of flows that we believe is representative of the flows throughout the high water season. Standard hydrologic techniques were employed to determine the flow that included characterization of the culverts (size, material, and slope), surveying the water surface elevation and depth at both the inlet and outlet of the culvert, measuring the velocity profile of the water at the culvert inlet, outlet and within the culvert, and noting any other limiting factors (ex.- vegetative flow restrictions, channel constrictions, or other flow irregularities).

We have summarized the flow information in the following table:

	5/2/18	5/18/18	6/5/18	6/20/18
G.N.H.S.-S	0.62 cfs	0.55 cfs	0.18 cfs	0.15 cfs
G.N.H.S.-C	1.27 cfs	1.65 cfs	1.58 cfs	1.30 cfs
W.A.o.G.- N	0.65 cfs	0.65 cfs	0.60 cfs	Not flowing



## **Vegetation and Soils Assessments**

We know that there is wetland vegetation associated with this intermittent stream corridor/wetland complex throughout the study area including the subject parcel (Whitefish 57 parcel) as well as upgradient (to the south) on the Gordon/Watkins property and throughout Great Northern Heights subdivision and downgradient (to the north) of the subject parcel on the Whitefish Assembly of God Church property.



**Great Northern Heights Subdivision.** *This photograph was taken on May 18, 2018 and shows the channel and riparian corridor/wetland complex immediately upstream of the (southern) first culverted road crossing. As can be seen the photo shows thick wetland and riparian grasses including sedges as well as a thick brush understory comprised of riparian shrubs.*

Throughout the Great Northern Heights subdivision, the channel is constrained within a narrower corridor (between two terraces) but is marked by a defined channel and a floodplain with riparian/wetland grasses and shrubs.

As you move northward through the Gordon/Watkins property and onto the subject parcel (Whitefish 57), the terraces recede and there is a change in vegetation. Riparian shrubs diminish and we transition to a more open wetland complex comprised of wetland grasses including







several species of sedges and rushes. This vegetative community persists throughout the southern portion of the Whitefish Assembly of God church's property. North of the church's access road, we again see the emergence of riparian shrubs.

Soil test pits were dug in locations to the south and north of the subject parcel which all exhibited the presence of hydric soils. The proposed developers of the Whitefish 57 subject property have previously acknowledged the presence of a jurisdictional wetland and our field data is concurrent with this assessment. Although we did not perform a rigorous wetland delineation, it can be definitively said that there is a jurisdictional wetland area upstream (to the south) of the subject parcel passing through the Gordon/Watkins property and the Great Northern Heights subdivision and this area meets the criteria of a jurisdictional wetland by exhibiting the known and documented presence of water, the known and documented presence of wetland vegetation, and the presence of hydric soils.

It can be definitively said that there is a jurisdictional wetland area downstream (to the north) of the subject parcel passing through the Whitefish Assembly of God church property and this area also meets the criteria of a jurisdictional wetland by exhibiting the known and documented presence of water, the known and documented presence of wetland vegetation, and the presence of hydric soils.





No evidence was seen or discovered throughout our study or fieldwork that would suggest that the subject parcel (Whitefish 57) is not equally bound by these characteristics and we are confident in asserting that subject parcel absolutely meets the essential criteria for definition as a jurisdictional wetland by meeting its three key delineative criteria: presence of water, presence of wetland vegetation, and the presence of hydric soils. The subject property's developers have previously stated that significant portions of their property are jurisdictional wetlands and we concur.



## **SUMMARY DISCUSSION**

The developers have acknowledged that there is a wetland on the subject property several times an in numerous locations within their proposals. However, despite the fact that they assert that this delineation exists, they have failed and refuse to produce a formal wetland delineation report and map with supporting documentation for review and consideration by the City of Whitefish and the public. In two previously submitted pieces of correspondence, we have addressed our very specific concerns and issues regarding each of the proposals. We submitted our concerns



regarding the first or original proposal in correspondence to the City's Planning Board on 2/15/18 and we submitted our concerns regarding the most recent revised proposal in correspondence to the City of Whitefish's City Council on 8/3/18. Both were intended to respond directly to the developer's proposal and set forth our specific concerns regarding the proposals. They were not necessarily intended to provide new data and information.

This document is intended to provide supplemental and to shed light on the broader picture by providing information and to characterize the natural resources in our study area and the subject property. We have reviewed and analyzed as much information as possible that is available to the public as well as developed additional information and performed field work and site specific field verification and characterization. Admittedly, we were unable to access the subject property (the Whitefish 57 parcel) but were able to access adjoining parcels and remotely view the subject parcel. All of this was done to give a clear picture of the setting and natural resource attributes that will be impacted by the proposed development.

Clearly, there are important natural resource attributes that are present in the study area including an intermittent stream/wetland complex. There are hydrologic inputs and water sources that have not been set forth in any of the developer's prior submittals. In fact, it is difficult to believe that these have been duly considered or even recognized. It is obvious that there is a valuable natural resource on the subject property that needs to be protected. In fact, the City of Whitefish's own planning documents and guidelines demands that these very resources be valued, considered, and protected. The developer has failed to give these due consideration and has not presented sufficient information to assuage concerns or guarantee that these natural resource qualities will be protected.

Ultimately, it is the City of Whitefish's responsibility to protect these valuable natural resources. We hope that this document sets forth the site and site conditions and more clearly characterizes the intermittent stream/wetland complex in both its size, scope, and value to such an extent that the City or the Courts can more clearly make a determination on this matter. We encourage the City to reject the current proposal outright as not being in the City's best interest and we hope that you will protect this valuable natural resource.

# MANAGER REPORT

June 26, 2013



## **FIRE DEPARTMENT PROMOTION**

Chief Tom Kennelly, after conducting a multi-faceted assessment center and interview process, has appointed Sarah Peterson to replace Dave Baker as a Fire Captain. Sarah will be captain of the "A" Shift, the shift on which she currently works. The City has three 24 hour shifts with the other Captains being Travis Tveidt and Justin Woods. Sarah began as a volunteer firefighter on January 20, 2004, was elevated to part-time firefighter on February 7, 2005, and was hired as a full-time professional firefighter on 7/12/2007. Chief Kennelly believes that Sarah may be the first female captain in any professional Fire Department in Montana.

## **DRAFT FLOOR PLAN FOR DOWNTOWN BATHROOMS ATTACHED TO O'SHAUGHNESSY CENTER**

Karl Cozad has received the first draft of a floor plan for the downtown public restrooms which will attach to the south side of the O'Shaughnessy Center. A copy of the floor plan is included in the packet with this report. Karl will work with the O'Shaughnessy Center staff and architect Duie Millette to revise these drawings and get them ready for bidding.

## **GROUNDWATER READINGS ON POTENTIAL NEW CEMETERY SITE**

We finished the groundwater test hole readings for a potential new Cemetery site on Gene Lamb's property on Karrow Avenue. Unfortunately, the groundwater was typically 3-5 feet below the surface of the ground and sometimes it was within 1 ½ feet of the ground surface. Therefore, this property will not be suitable as a new Cemetery site. The groundwater report is attached to this report in the packet.

The Cemetery Committee is continuing to look for and evaluate alternative sites.

## **RESORT TAX**

Resort Tax collections were down 2% in April of 2013 compared to April of 2012. The April 2013 collections equaled \$94,660 compared to \$96,377 last year. For the year-to-date through April, our collections are at \$1,635,663 which is \$245,790 or 10.1% higher than last year at this time. A chart and graph of recent collections is included in the packet with this report.



IERE D. JOHNSON, R.S.  
ENVIRONMENTAL HEALTH CONSULTING  
4572 Whitefish Stage Road  
Whitefish MT 59937  
406-270-3635  
406-863-9990 (FAX)  
jdj@bresnan.net

received  
6/24/13 CS

June 21, 2013

Chuck Stearns  
City Manager  
City of Whitefish  
418 E 2<sup>nd</sup> Street  
Whitefish MT 59937

**Subject:** Groundwater monitoring, Lot 2, Assembly of God Sub., Section 1, T30N, R22W,  
Flathead County

Dear Chuck:

As per your request the above noted property has completed the 2013 groundwater monitoring season. Six (6) testholes were excavated and groundwater monitoring pipes installed on March 6, 2013. I have enclosed a copy of the results.

All 6 pipes had groundwater shallower then the desired use for cemetery specifications. As far as a County septic permit being issued 4 pipes passed (1-4) this spring which would require an elevated sand design.

The soil conditions were consistent throughout the test sites being a compact glacial till. The soils exhibit very low internal drainage. This is typical of glacial till soils in that they have high porosity but low permeability. Pore spaces that are not interconnected.

Should you have any questions or concerns please give me a call at your earliest convenience.

Sincerely,

  
Iere Johnson, R.S.

Year 2013

## GROUNDWATER MONITORING

Date Registered 3/17/2013

Date Returned \_\_\_\_\_

Zone 2

Pre Subdivision \_\_\_\_\_

GWM Only \_\_\_\_\_

Septic Application \_\_\_\_\_

ENSURE INFORMATION IS CORRECT. LAYOUT MAP OF SITE & DIRECTIONS MUST BE SUBMITTED. IF PROPERTY IS DIFFICULT TO ACCESS, PLEASE PROVIDE DETAILED DIRECTIONS. ALL MEASUREMENTS MUST INCLUDE NUMBERS EVEN IF THE PIPE IS DRY.

Owner (Print) Gene Lamb

Signature \_\_\_\_\_

Date 3/6/2013Property Address 1555 Karrow Ave WFMailing Address 1535 Karrow Ave WFContact (if not owner) Jere JohnsonPhone ( ) 270-3635Legal Description (S) 1 (T) 30 (R) 22 Assessor/Tract # \_\_\_\_\_ (or) \_\_\_\_\_Subdivision Name Assembly of God Sub.Lot 2

Block \_\_\_\_\_

Initial	Date	Site # 1			Site # 2			Site # 3			Site # 4		
	MM/DD/YY	A	B	A-B	A	B	A-B	A	B	A-B	A	B	A-B
	3/6/2013	TEST HOLE EXCAVATED											
	3/27	57"	12"	45"	62"	12"	50"	55"	12"	43"	63"	12"	51"
	4/4	58	1	46	65	1	53	53	1	41	63	1	51
	4/11	60		48	72		60	52		40	65		53
	4/20	59		47	70		58	51		39	60		48
	4/30	57		45	68		56	51		39	55		43
	5/6	54		42	63		51	48		36	51		39
	5/17	60		48	65		53	50		38	54		42
	5/25	70		58	83		71	61		49	62		50
	6/7	81		69	91		79	65		53	71		59
	6/15	90		78	101		89	72		60	81		69
	6/21	97		85			DRY	84		72	90		78

SEE REVERSE SIDE FOR MONITORING PIPE INSTALLATION AND MONITORING GUIDELINES

GWM MUST BE REGISTERED WITH ENVIRONMENTAL HEALTH AT START OF MONITORING SEASON

Monitoring for this parcel shall be conducted from \_\_\_\_\_ through \_\_\_\_\_

A measurement must be taken every 7-10 days. Less frequent monitoring may void monitoring for the current period and result in monitoring the site through the next groundwater monitoring season. I hereby certify that the above monitoring measurements and information are true, complete and correct to the best of my knowledge.



# GROUNDWATER MONITORING

Year 2013

Zone 2

Date Registered 3/17/2013

Date Returned \_\_\_\_\_

Pre Subdivision \_\_\_\_\_

GWM Only \_\_\_\_\_

Septic Application \_\_\_\_\_

(2ND PAGE)

ENSURE INFORMATION IS CORRECT. LAYOUT MAP OF SITE & DIRECTIONS MUST BE SUBMITTED. IF PROPERTY IS DIFFICULT TO ACCESS, PLEASE PROVIDE DETAILED DIRECTIONS. ALL MEASUREMENTS MUST INCLUDE NUMBERS EVEN IF THE PIPE IS DRY.

Owner (Print) Gene Lamb

Signature \_\_\_\_\_

Date 3/6/2013

Property Address 1555 Karrow Ave WF

Mailing Address 1535 Karrow Ave WF

Contact (if not owner) Jere Johnson

Phone (406) 270 3635

Legal Description (S) 1 (T) 30 (R) 22 Assessor/Tract # \_\_\_\_\_ -(or)-

Subdivision Name Assembly of God Sub

Lot 2

Block \_\_\_\_\_

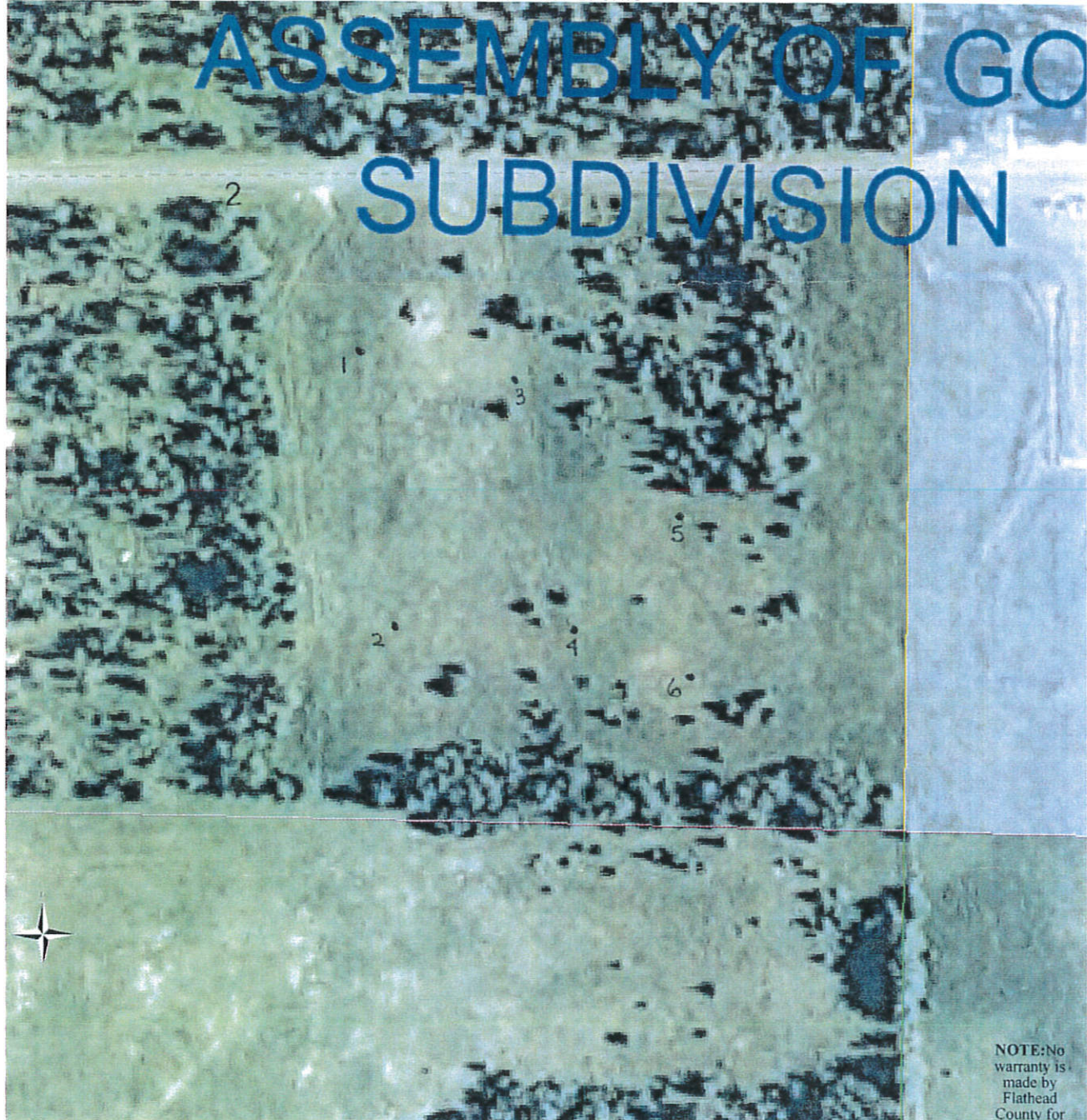
Initial	Date MM/DD/YY	Site # <u>5</u>			Site # <u>6</u>			Site #			Site #		
		A	B	A-B	A	B	A-B	A	B	A-B	A	B	A-B
	<u>3/6/2013</u>	<u>TEST HOLE EXCAVATED</u>											
	<u>3/27</u>	<u>43"</u>	<u>12"</u>	<u>31"</u>	<u>46"</u>	<u>12"</u>	<u>36"</u>						
	<u>4/4</u>	<u>42</u>		<u>30</u>	<u>48</u>		<u>36</u>						
	<u>4/11</u>	<u>41</u>		<u>29</u>	<u>46</u>		<u>34</u>						
	<u>4/20</u>	<u>48</u>		<u>36</u>	<u>45</u>		<u>33</u>						
	<u>4/30</u>	<u>29</u>		<u>17</u>	<u>40</u>		<u>28</u>						
	<u>5/6</u>	<u>32</u>		<u>20</u>	<u>35</u>		<u>23</u>						
	<u>5/17</u>	<u>35</u>		<u>23</u>	<u>40</u>		<u>28</u>						
	<u>5/25</u>	<u>39</u>		<u>27</u>	<u>51</u>		<u>39</u>						
	<u>6/7</u>	<u>44</u>		<u>32</u>	<u>61</u>		<u>49</u>						
	<u>6/15</u>	<u>52</u>		<u>40</u>	<u>62</u>		<u>50</u>						
	<u>6/21</u>	<u>68</u>		<u>56</u>	<u>75</u>		<u>63</u>						

SEE REVERSE SIDE FOR MONITORING PIPE INSTALLATION AND MONITORING GUIDELINES

GWM MUST BE REGISTERED WITH ENVIRONMENTAL HEALTH AT START OF MONITORING SEASON

Monitoring for this parcel shall be conducted from \_\_\_\_\_ through \_\_\_\_\_

A measurement must be taken every 7-10 days. Less frequent monitoring may void monitoring for the current period and result in monitoring the site through the next groundwater monitoring season. I hereby certify that the above monitoring measurements and information are true, complete and correct to the best of my knowledge.



**NOTE:**No warranty is made by Flathead County for the use of GIS data for purposes not intended by Flathead County.

**CONTACT:**  
800 South  
Main  
Kalispell  
MT, 59901  
Phone (406)  
758-5540





Michelle T. Weinberg  
WEINBERG & HROMADKA, PLLC  
PO Box 652  
Whitefish, MT 59937  
(406) 314-3583  
michelle@whlawmt.com

May 13, 2020  
*Sent via E-Mail*

Flathead County Planning & Zoning Office  
40 11<sup>th</sup> Street West, Suite 220  
Kalispell, MT 59901  
E-Mail: [planning.zoning@flathead.mt.gov](mailto:planning.zoning@flathead.mt.gov)



Re: South Whitefish Neighborhood Association comments regarding the Crow LLC  
Preliminary Plat Application (FPP-19-12)

Dear Board:

Weinberg & Hromadka, PLLC represents the South Whitefish Neighborhood Association (“Association”) in connection with the above referenced Preliminary Application (“Application”). We understand the Planning Board (“Board”) will hold a public hearing on the Application on May 13, 2020 and may forward its recommendation to the Flathead County Board of Commissioners. As such, the Association offers the following concerns and legal position regarding the Application.<sup>1</sup>

First, the Environmental Assessment (“EA”) is insufficient and incomplete under the plain language of the Montana Subdivision and Platting Act (“MSPA”) and Flathead County Subdivision Regulations (“FCSR”), in contravention of both the MSPA and FCSR. An EA is inadequate if it fails to adequately summarize the impacts required by the MSPA or if the relevant information is not provided in a cohesive format. *Citizens for Responsible Dev. v. Bd. of Cnty. Comm’rs*, 2009 MT 182, ¶ 25, 351 Mont. 40, 48-49, 208 P.3d 876, 882.

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<sup>1</sup> The Association also incorporates by reference the concerns and legal positions it raised before the Board of Adjustment before its decision to approve Crow LLC’s Conditional Use Permit Application on May 7, 2019.

In this case the EA is inadequate because it fails to analyze the potential impacts of the subdivisions on the natural environment and provide the information referenced therein in a cohesive format. By way of example and not limitation:

- Contrary to the EA's findings regarding the location of and probable impacts to surface waters, perennial and intermittent streams *are* associated with and stem from the nearby wetland associated with the property, as evidenced by the Montana Natural Heritage Program (Map Viewer):



- Despite the area's high ground water, the EA does not "Establish the seasonal minimum and maximum depth to water table, dates on which these depths were determined, and the location

MAY 13 2020



and depth of all known aquifers which may be affected by the proposed subdivision.” Thus, the EA’s Ground Water determination is likewise insufficient.

- The EA does not identify the locations of noxious weeds on the property as required by RCSR, app. C. The Application also did not include the purported Weed Management Plan referenced in the EA for public review and comment.
- Contrary to the EA’s findings, the Staff Report identifies 14 species of concern located in the vicinity of the proposed subdivision, including the Hoary Bat, Little Brown Myotis, Fisher, Grizzly Bear, Northern Goshawk, Evening Grosbeak, Pileated Woodpecker, Common Loon, Cassin’s Finch, Varied Thrush, and Northern Alligator Lizard.
- The EA also fails to identify with specificity of all big game winter ranges, waterfowl nesting areas, and habitat for rare, endangered, or wetland species known or likely to occur on the property.
- While the EA states the FWP’s living with covenants “can be done” to minimize the impact to wildlife, the EA does not state that the owner will adopt these covenants. Further, the EA does not address how such covenants would specifically mitigate the impacts to the 14 species of concern identified in the Staff Report. Thus, the EA offers no proposed measures to protect or enhance wildlife habitat in contravention of the MSPA and RCSR.

The Application is also deficient because it fails to include a traffic impact study as required by RCSR 4.7.17. Finally, while the Application states that this “proposal is for 6 single family residential lots,” the staff report states that the “CUP application and preliminary plat materials *indicate* Lot 1-6 will *likely* be developed with a single family dwelling.” The public’s right to participate and know requires the public to be informed about a project in specific terms in order to evaluate and comment on the project with specificity. Thus, the discrepancy between the Application and the Staff report should be clarified on the record and if more than 6 single family dwelling units may be constructed on Lots 1-6, an additional public hearing must be conducted.

While the above comments constitute an initial review of some of the glaring deficiencies contained in the Application, the Association’s assessment of the EA was temporally constrained by the County’s failure to include both the EA and sufficiency determination with Application materials posted online. As such, the County failed to meet the Montana Subdivision and Platting Act (“MSPA”) subdivision review and public participation requirements contained in §§ 76-3-604 and -605, MCA:

The Montana Constitution provides that government agencies are to afford “such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.” Mont. Const. art. II, § 8. The procedural requirements under subsection 604 facilitate public participation by informing the public

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at what stage the application is in the process--whether the governing body is assessing the completeness of the application or whether the process has moved ahead to the governing body's consideration of the substantive merits of the application.

Similarly, the EA enhances public participation by summarizing the above-mentioned impacts upon the local community which the public can then consider and respond to, whether in agreement or disagreement. Failure to provide this information, or failure to provide it in a reasonably cohesive fashion, makes it difficult for the public to use the information.

*Citizens for Responsible Dev. v. Bd. of Cnty. Comm'rs*, 2009 MT 182, ¶¶ 23-24, 351 Mont. 40, 48-49, 208 P.3d 876, 882.

Because the Application fails to meet the requirements of the MSPA and FCSR, the Board has no choice but to deny the Application. We appreciate your attention to this important matter and ask that you deny the Application for the reasons stated herein.

Sincerely,

Michelle T. Weinberg  
WEINBERG & HROMADKA, PLLC

MAY 13 2020



## Erik Mack

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**From:** Mary Fisher  
**Sent:** Wednesday, May 13, 2020 11:53 AM  
**To:** Erik Mack  
**Subject:** FW: Public Comment: FPP 19-12, Crow LLC  
**Attachments:** 5.3.19 SWNA BOA Comment.Crow LLC.Final.pdf

**From:** Michelle Weinberg <michelle@whlawmt.com>  
**Sent:** Wednesday, May 13, 2020 11:47 AM  
**To:** Planning.Zoning <Planning.Zoning@flathead.mt.gov>  
**Subject:** Re: Public Comment: FPP 19-12, Crow LLC

Hello again,

Please see attached a corrected public comment from the South Whitefish Neighborhood Association which removes the reference to the TIS requirement.

Thank you.

On Wed, May 13, 2020 at 9:37 AM Michelle Weinberg <[michelle@whlawmt.com](mailto:michelle@whlawmt.com)> wrote:

Hello,

Please see the attached comment from the South Whitefish Neighborhood Association.

Thank you.

--

Michelle Tafoya Weinberg  
Weinberg & Hromadka, PLLC  
PO Box 652  
Whitefish, MT 59937

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Michelle Tafoya Weinberg  
Weinberg & Hromadka, PLLC  
PO Box 652  
Whitefish, MT 59937

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Michelle Tafoya  
TAFOYA LAW FIRM, PLLC  
PO Box 398  
Whitefish, MT 59937  
(406) 314-3583  
michelle@tafoyalawfirm.com

May 3, 2019  
*Sent via E-Mail*



Mark Mussman, Director  
Flathead County Planning & Zoning Office  
40 11<sup>th</sup> Street West, Suite 220  
Kalispell, MT 59901  
E-Mail: mmussman@flathead.mt.gov; planningweb@flathead.mt.gov

Re: South Whitefish Neighborhood Association comments regarding the Crow LLC/CUP Application

Dear Board:

Tafoya Law Firm, PLLC represents the South Whitefish Neighborhood Association ("Association") in connection with the above referenced Conditional Use Permit Application ("Application"). We understand the Board of Adjustment ("Board") will discuss the Application on May 7, 2019 and may take final action on the Application. As such, the Association offers the following concerns and legal position regarding the Application.

First, it is the Association's position that the cluster development subdivision proposed in the Application cannot be approved through a Conditional Use Permit ("CUP") under the Flathead County Zoning Regulations ("FCZR"). Pursuant to Title 76, Chapter 3, Part 5 of the Montana Code Annotated, which governs the local regulation of subdivisions in the state, a local government has the option to implement cluster development regulations within its subdivision regulations, but does not authorize the approval of a cluster development through the conditional use permitting process under its zoning regulations. As such, because the county has failed to adopt cluster development subdivision regulations pursuant to Mont. Code Ann. §§ 76-3-504 and -509, and because the Board only has the power to hear and decide certain matters relating to zoning appeals, special exceptions,<sup>1</sup> and variances as proscribed by Mont. Code Ann. § 76-2-223, the Board has no authority to hear or approve the Application.

Further, as a general government power, the county only has those legislative and administrative powers provided by law. While Montana statutory law provides the county with the power to enact cluster

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<sup>1</sup> A special exception is otherwise known as a conditional use permit.

development regulations – again, as part of its subdivision regulations – the county must stay within the scope of this authority. Here, even if the county were properly considering this request through a mechanism implemented in its subdivision regulations, the proposed subdivision cannot be considered a “cluster development” as that term is defined in Mont. Code Ann. § 76-3-103 or as contemplated by § 76-3-509 because the lots are arranged in standard subdivision form, only with lots smaller than allowed in the underlying zone. Additionally, approval of the Application is beyond the county’s land use authority because § 76-3-509(2)(c) requires open space dedications to be subject to an irrevocable covenant prohibiting further subdivision or development, but the Application makes no commitment in this regard and the staff report does not make this statutory requirement a condition of the Application’s approval. Thus, this proposal does nothing to advance, and in fact contradicts, the Montana Legislature’s requirements of and purpose behind the cluster development local option, which the legislature enacted to preserve Montana’s unique landscape, agricultural land, and reduce local government costs for infrastructure and the provision of services.

In sum, the cluster development proposed in the Application is the result of an invalid planning tool, both because approval of cluster developments through a CUP is beyond the police power delegated to the county by the State of Montana and because the county is acting ultra vires, beyond the scope of their authority. As such, the Board’s approval of the Application would be unlawful.

Finally, notwithstanding the Board’s lack of authority to hear or approve this CUP, it would be an abuse of discretion for the Board to approve the Application because: 1) the applicant has failed to meet its burden of proof for satisfying the FCZR CUP criteria; and 2) the staff report contains findings of fact that are either not supported in the record or by law or are not accompanied by adequate findings of specific fact, in contravention of the FCZR CUP approval criteria. The Application and the corresponding staff report’s deficiencies include but are not limited to the following:

**Site Suitability:** The Applicant had failed to prove that the site, located in a rural area surrounded by wildlife habitat and agricultural operations, is suitable for the density being proposed.

- While the Application mentions groundwater monitoring results, it does not provide the specific results or address how groundwater issues could affect the adequate usable space for the site. Finding # 1 in the staff report also fails to mention or address how the presence of groundwater in the site’s usable space is compatible with the density and use being proposed.
- With respect to the presence of environmental constraints, the Application states that the property does not have any constraints such as a streams, endangered species, or unstable slopes, but does not provide any proof for this conclusion and concedes in another portion of the Application that a spring exists on the property. In fact, according to the surrounding neighbors, the Blanchard Lake/Karrow Avenue area contains important natural features, including a large wetland complex to the south, Blanchard Lake to the southwest, and Lost Coon Lake to the northwest. As such, the subject property is considered a wildlife corridor for many species as they move between these natural features. Additionally, the Montana Fish,

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Wildlife, and Parks species of special concern inventory also indicates that sensitive plant and animal species may rely on the forested area in the proposed site for critical habitat. Bald eagles, a federally protected species, have also been observed in the area. Finally, because the staff report provides no analysis or specific data in Finding #3, the Board's adoption of such a conclusory and unsupported finding would be an abuse of discretion.

**Availability of Public Services and Facilities:** The Applicant has failed to prove that all services and facilities will be available and adequate to serve the needs as designed and proposed:

- Again, while the Application mentions groundwater monitoring results and a Utility Plan, it does not provide the results, the plan, or address how the presence of groundwater issues allow for the septic system being proposed. The Application also admits that the septic systems have a moderate risk of failure, which indicates significant groundwater restraints to the proposed development. The staff report contains no finding regarding the suitability of the proposed septic system or the availability of sewer services and facilities and thus the Board has no finding upon which to make a decision on the Application.
- The Application is proposing to upgrade its existing well to multi-user system. However, the site plan shows that the proposed system would require the property owner across from the subject property to agree to a 100' well isolation zone, which would require the execution of a Declaration of Well Control Zone. Neither the applicant nor the staff report states that such a declaration has been executed, nor it is foreseeable the property owner would agree to such a declaration given the livestock operation present on the property and the declaration's requirement that no livestock would be permitted to be confined, fed, watered, or maintained with the well isolation zone. The staff report contains no finding for the availability of water services and facilities and thus the Board has no finding upon which to make a decision on the Application.

**Immediate Neighborhood Impact:** The Applicant has failed to prove that the proposed use will not be detrimental to the surrounding neighborhoods in general:

- While the Application and staff report state that the proposed development will not have an adverse impact on the surrounding neighborhood, due to the property's classification as being "residential in nature," the Application does not indicate if the single family or accessory units will be used for short-term, vacation rentals. Without such information, the Application cannot be evaluated under this prong of the CUP criteria and the Board has no basis upon which to make a decision on the Application.
- The Application contains a proposed trail on the park open space but fails to state how this trail will impact the surrounding neighborhood. Specifically, the Applicant has not explained how the users of the trail will be prevented from disturbing or trespassing onto neighboring properties and the staff report contains no findings regarding the trail's impacts nor does it

include conditions on the proposal to prevent such impacts. As such, the Board has no basis upon which to make a decision on the Application.

We appreciate your attention to this important matter. Please feel free to contact me with any questions or concerns. Any mailed correspondence should be sent to:

Michelle Tafoya  
Tafoya Law Firm, PLLC  
PO Box 398  
Whitefish, MT 59937

Sincerely,

Michelle Tafoya  
TAFOYA LAW FIRM, PLLC

CC: MARK MUSSMAN

MAY 13 2020



Dear Planning Board;

I understand you are reviewing an application from C.R.O.W LLC a 6 lot subdivision and possibly 12 unit subdivision on 1545 Karrow Ave this evening.

This property was recently re-zoned by the County to R2.5 from 15 acre Ag so the minimum lot size I understand is 2.5 acres. I understand the owners are seeking to reduce the lot size from 2.5 acres to 1.3 - 1.5 acres and leave the remaining acreage in open space. Because much of the property may not be approved for septic because of the high ground water and the wetlands and conveyance to the east and south, that runs all the way to 7<sup>th</sup> street, this would make some sense if it abides by your regulations, but it does not seem to be in accordance with a typical cluster development where the development surrounds the open space or park area.

According to comments by the City of Whitefish, the lots are arranged in standard subdivision form with smaller lots and not an actual cluster where the open space should be either public open space or a private homeowner's park and their planning office feels the applicant is trying to double the allowed density without a proper clustering design circumventing the 2.5 acre lot minimums required by this zoning.

I am not necessarily opposed to this option as all septic and well in one area if this is legal by your regulations, but most of the neighbors out there were satisfied with the agricultural zoning and a push by a very few to change the ag zoning to R2.5. There is the concern that the first development like this out there in many years may set a precedent to more density in the future without the services available, creating more traffic on a substandard road and changing the rural nature of the area.

In addition the drain field for 12 structures seems to drain toward the neighbor's property to the north and hopefully that is part of the consideration and approval. If this subdivision were approved I would request there is a restriction on any future development of the open space and a question I would have is if this open space will be private property, public property or owned in common with the other 6 lots?

I was asked to comment on this development and appreciate your considering these concerns, or other concerns of the neighbors.

Best regards,

Mary Person 5/13/2020  
325 Blanchard Lake Dr.  
Whitefish, Mt. 59937



## Erik Mack

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**From:** Mary Fisher  
**Sent:** Wednesday, May 13, 2020 3:10 PM  
**To:** Erik Mack  
**Subject:** FW: Tonight's meeting re: NORTH LAMB LANE SUBDIVISION/ CROW LLC

-----Original Message-----

From: Maria Rosetti <mariarosetti2000@aol.com>  
Sent: Wednesday, May 13, 2020 3:10 PM  
To: Planning.Zoning <Planning.Zoning@flathead.mt.gov>  
Cc: Gerry <gennaro@bermanrosetti.com>  
Subject: Tonight's meeting re: NORTH LAMB LANE SUBDIVISION/ CROW LLC

I am writing regarding the proposed subdivision off of Karrow Avenue on LAMB LANE.  
We live Directly across the street On 10 acres.

- 1). This is not a CLUSTER DEVELOPMENT since the homes are not clustered around a common piece of land, so I do not understand why the lots have been made smaller than the required 2.5 acres the area is zoned for. I see a narrow path leading down to what is a heavily wooded area...will this truly become an open park?
- 2).The existing well appears to have an easement that goes under the road (Karrow) and also encompasses the neighboring Myers property and my own. That is pasture land for grazing livestock...isn't this well too close to the road and and our properties, and creates a risk of contamination?
- 3). Another question is will each of these homes have separate garages with guest apartments attached? How many families will actually be using that well and drain field?  
6 or 12?

It appears to us the Mays are trying to bend a lot of rules...case in point getting approval to "Short term AirBNB" their existing homes on the other side of the street, so we worry where will this all stop. We moved out to this area for the wide open spaces and quiet, so it is distressing to see this subdivision go up, not adhering to the existing parameters that have been put in place.

Sincerely,

Maria and Gennaro Rosetti  
1530 Karrow Avenue  
Whitefish, MT

Sent from my iPad



## Erik Mack

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**From:** Mary Fisher  
**Sent:** Wednesday, May 13, 2020 3:04 PM  
**To:** Erik Mack  
**Subject:** FW: Planning and Zoning meeting tonight 5-13 Public Comment

**From:** Myers Cattle Co <myerscattleco@gmail.com>  
**Sent:** Wednesday, May 13, 2020 3:01 PM  
**To:** Planning.Zoning <Planning.Zoning@flathead.mt.gov>  
**Subject:** Planning and Zoning meeting tonight 5-13 Public Comment

I would like to make a statement to be read for the record regarding the CROW LLC development at 1545 Karrow Ave.

My family and I purchased land on Karrow as part of a rural agricultural community. It is the general interest of the neighborhood to continue to uphold the nature of the rural agriculture setting. With that said I do understand there will be new houses build and development is inevitable. I would like to hear from CROW LLC in response to the changes.

1. Why is this changing from a cluster development to 6 individual lots.
2. From reading through the information the housing to built will be approximately 800 square feet with an additional unattached living structure with similar living space above a garage. If this is correct it seems to me this is ripe for stacking in VRBO's. Is it your intention to add 6 homes and 6 additional living structures for a total of 12 VRBO's?
3. If your answer is not to the above will you be applying for a conditional use permit for short term rentals or VRBO's?

Thanks in advance for your answering my questions.

## Erik Mack

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**From:** Mary Fisher  
**Sent:** Wednesday, May 13, 2020 1:33 PM  
**To:** Erik Mack  
**Subject:** FW: Reference: Karrow Properties - Crow LLC

**From:** Bookworks <bookworks@bresnan.net>  
**Sent:** Wednesday, May 13, 2020 1:32 PM  
**To:** Planning.Zoning <Planning.Zoning@flathead.mt.gov>  
**Subject:** Reference: Karrow Properties - Crow LLC

Reference: Karrow Properties - Crow LLC

As a lay person I find the application and its very limited supporting documentation confusing and lacking credentials. Did the county write the report or did the applicant? Either way, it lacks documented research required by the county subdivision regulations. I can quote the random Traffic or Dept. of Ag figures, but does that make it correct?

Excessive traffic (pg 13 May 2019 BOA staff report) 50-705 trips per day, is this correct? Has anyone checked this? Are trips from the church counted? The church uses Lamb lane/Karrow/Blanchard Lk.  
When will the county stripe Karrow? Why is there no documentation on the capacity of Karrow Ave to handle additional traffic?

The Environmental Assessment talks about a ground water report. Where is a legitimate hydrology report? The city of Whitefish rejected this property for a cemetery. Their engineer report revealed water "1 1/2 feet to 5 feet below the surface. This report leads to the hydrology report prepared by hydrologist Clint Brown for the South WF Neighborhood Association in 2018. It traces the wetlands from Western Bld Center and Great Northern Heights to Seventh St. in Whitefish. The last two winters have been dry, but the spring of-2017 turned the creek into a river (see report submitted by Mayre Flowers). In a normal year there is running/standing water. This development is in that path. The city of Whitefish rejected a proposed development just south of this property in 2018. Our hydrology report for the SWNA documented the wetland and drainage system which extents north and through this proposed subdivision.

Page 5 May 2019 BOA staff report includes the objection to the development from the city of Whitefish. Agreeing with their report my opinion is that this is a subdivision pretending to be a cluster to avoid the septic issue. The 5 acres of open space is probably unusable because of high ground water.

This would be the first development of its kind from Hwy 93 to 7th St in Whitefish. Overall I feel it is too dense for our rural area. Even allowing R2.5 is not compatible with the neighborhood. Page 2 May 2019 BOA staff report, item C quoting the R-2.5 zoning intent states that "no uses be permitted in this district that tend to devalue property". I feel that the impact of this development will devalue property including my own and be detrimental to this sensitive intermittent stream channel/wetland complex.

Cheryl Watkins  
143 Old Morris Trail  
Whitefish